

Pension Benefit Guaranty Corporation

§ 4043.1

and the date by which PBGC will provide the information to the affected party that made the request.

(2) *Confidential information.* (i) In responding to a request under paragraph (a) of this section, PBGC will not disclose any portions of the administrative record that are prohibited from disclosure under the Privacy Act, 5 U.S.C. 552a.

(ii) A plan administrator or plan sponsor that has received notification pursuant to paragraph (b)(1) of this section may seek a court order under which those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree to ensure the confidentiality of such information, and

(B) Will not be disclosed to other affected parties.

(iii) If, before the 15th business day (as defined in § 4000.22 of this chapter) after PBGC has received a request under paragraph (a), PBGC receives a court order as described in paragraph (b)(2)(ii) of this section, PBGC will disclose those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code, only as provided in the order.

(3) *Timing of response.* PBGC will send the administrative record to the affected party that made the request not later than the 15th business day (as defined in § 4000.22 of this chapter) after it receives the request.

(4) *Form and manner.* PBGC will provide the administrative record using measures (including electronic measures) reasonably calculated to ensure actual receipt of the material by the intended recipient.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

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Subpart D—Notice of Failure To Make Required Contributions

- 4043.81 PBGC Form 200, notice of failure to make required contributions; supplementary information.

AUTHORITY: 29 U.S.C. 1082(f), 1302(b)(3), 1343.

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Subpart A—General Provisions

§ 4043.1 Purpose and scope.

This part prescribes the requirements for notifying the PBGC of a reportable event under section 4043 of ERISA or of a failure to make certain required contributions under section 302(f)(4) of

ERISA or section 412(n)(4) of the Code. Subpart A contains definitions and general rules. Subpart B contains rules for post-event notice of a reportable event. Subpart C contains rules for advance notice of a reportable event. Subpart D contains rules for notifying the PBGC of a failure to make certain required contributions.

§ 4043.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, controlled group, ERISA, fair market value, irrevocable commitment, multiemployer plan, notice of intent to terminate, PBGC, person, plan, plan administrator, proposed termination date, single-employer plan, and substantial owner.

In addition, for purposes of this part:

De minimis 10-percent segment means, in connection with a plan's controlled group, one or more entities that in the aggregate have for a fiscal year—

(1) Revenue not exceeding 10 percent of the controlled group's revenue;

(2) Annual operating income not exceeding the greatest of—

(i) 10 percent of the controlled group's annual operating income;

(ii) 5 percent of the controlled group's first \$200 million in net tangible assets at the end of the fiscal year(s); or

(iii) \$5 million; and

(3) Net tangible assets at the end of the fiscal year(s) not exceeding the greater of—

(i) 10 percent of the controlled group's net tangible assets at the end of the fiscal year(s); or

(ii) \$5 million.

De minimis 5-percent segment has the same meaning as a *de minimis 10-percent segment*, except that "5 percent" is substituted for "10 percent" each time it appears.

Event year means the plan year in which the reportable event occurs.

Fair market value of the plan's assets means the fair market value of the plan's assets as of the testing date for the applicable plan year, including contributions attributable to the previous plan year for funding purposes under section 302(c)(10) of ERISA or section 412(c)(10) of the Code if made by the earlier of the due date or filing date of

the variable rate premium for the applicable plan year, but not to the extent contributions are used to satisfy the quarterly contribution requirements under section 302(e) of ERISA or section 412(m) of the Code for the applicable plan year.

Foreign entity means a member of a controlled group that—

(1) Is not a contributing sponsor of a plan;

(2) Is not organized under the laws of (or, if an individual, is not a domiciliary of) any state (as defined in section 3(10) of ERISA); and

(3) For the fiscal year that includes the date the reportable event occurs, meets one of the following tests—

(i) Is not required to file any United States federal income tax form;

(ii) Has no income reportable on any United States federal income tax form other than passive income not exceeding \$1,000; or

(iii) Does not own substantial assets in the United States (disregarding stock of a member of the plan's controlled group) and is not required to file any quarterly United States tax returns for employee withholding.

Foreign-linked entity means a person that—

(1) Is neither a foreign entity nor a contributing sponsor of a plan; and

(2) Is a member of the plan's controlled group only because of ownership interests in or by foreign entities.

Foreign parent means a foreign entity that is a direct or indirect parent of a person that is a contributing sponsor.

Form 5500 due date means the deadline (including extensions) for filing the annual report under section 103 of ERISA.

Notice date means the deadline (including extensions) for filing notice of the reportable event with the PBGC.

Participant means a participant as defined in § 4006.2.

Public company means a person subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 or a subsidiary (as defined for purposes of the Securities Exchange Act of 1934) of a person subject to such reporting requirements.

Testing date means, with respect to a plan year—